IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1556 OF 2004

IN

SUIT NO.1572 of 2004

Vinay Asharam Rathi. ... Plaintiff.

vs.

1(a) Mr.Narendra Babubhai Panchal
and others. ... Defendants.

Mr.P.V.Palan i/b. M/s.Dave & co., for Plaintiff.

Mr.D.A.Barot, for Defendant nos.1(a) to 1(c).

CORAM: D.K.DESHMUKH,J.

DATED: 1st April,2005

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit seeking a decree of specific performance of the oral agreement

to enter into an Agreement for sale in favour of the plaintiff. The plaintiff relied on the affidavit of the husband of original defendant no.1. Though that affidavit accepts the existence of the agreement to sell and accepts the receipt of Rs.50,00/- as the earnest money, it does not specify what was the agreed amount of consideration, and also does not specify the period during which the amount was to be paid. The plaintiff relies on his own letter dated 5th May,1993, which shows that the amount of consideration was Rs.3,50,000/-, but this letter also does not specify as to when the balance amount of consideration was to be paid. Then, there is letter dated 12th May,1993 from the husband of the owner of the property which states that the agreed amount of consideration was Rs.7,51,000/- , out of which Rs.50,000/- was paid as earnest money and the balance amount was to be paid within a period of three months from April,1992. Thus, the documents that are on record do not establish the essentials of the agreement for sale viz. the agreed amount of consideration, the period during which that amount was to be paid. It is thus, clear that the oral evidence would be required for establishing the terms of agreement. It is therefore, obvious that the plaintiff does not have any prima facie case in his favour. As the plaintiff does not have even a prima facie case, in my opinion, it will be unjust to bind this property by any interim order. Notice of Motion is therefore, disposed of. Any ad-interim orders that may be operating are vacated.

2. At this stage, a request is made for continuance of the ad-interim order. However, considering that the suit is based on the alleged oral agreement

of sale and the plaintiff does not have even a prima facie case in his favour, in my opinion, it will not be proper to extend the operation of the ad-interim order. The request is rejected.

1.4.2005 ---